

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELDON LEON-HOLLIS FLOYD,

Defendant-Appellant.

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UNPUBLISHED

March 8, 2005

No. 251478

Wayne Circuit Court

LC No. 02-002501-06

Before: Murray, P.J., and Markey and O’Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of keeping a house of ill-fame, MCL 750.452, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to the mandatory two-year prison term for felony-firearm, but the sentence on the other conviction was suspended. Defendant appeals as of right. We affirm.

Defendant first challenges the sufficiency of the evidence as to both charges. When we review a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

The statute at issue is violated when an individual (1) keeps, maintains or operates (a) a house of ill-fame, (b) a bawdy house, or (c) a place of prostitution or lewdness, or (2) aids and abets another in keeping, maintaining or operating any of the above establishments. MCL 750.452; *People v Mayes*, 44 Mich App 482, 483; 205 NW2d 212 (1973). The prosecutor’s theory of the case was that defendant aided and abetted in keeping, maintaining or operating a house or place for the purpose of prostitution or lewdness.

Prostitution is generally understood as the performance of a sexual act for money and encompasses both sexual intercourse and direct manual stimulation of the genitals. *People v Warren*, 449 Mich 341, 345-347; 535 NW2d 173 (1995). The term “lewdness” has “a meaning closely related to the word ‘prostitution,’” and includes “some sexual activities that stop just short of prostitution, as well as scandalous sexual exhibitions.” *Michigan ex rel Wayne Co Prosecutor v Dizzy Duck*, 449 Mich 353, 364; 535 NW2d 178 (1995). “[L]ap dancing is lewd. An almost-nude female employee squirming in the lap of a customer for his sexual arousal is conduct that carries one right up to the line where prostitution begins.” *Id.*

The evidence showed that defendant manned the booth of an unlicensed bar where male patrons engaged in sexual activity with nude dancers. Undercover officers observed female dancers performing lap dances and one officer explained that a dancer would gyrate on a man's lap while removing her clothing. One of the officers testified that dancers asked him to engage in acts of prostitution. The officers testified that they saw dancers accompany men into rooms off the main club area. It can reasonably be inferred from the presence of many used condoms in those rooms that the dancers and patrons used the rooms for sex. Therefore, viewing the evidence in the light most favorable to the prosecution, the illegal bar was operated as a place of prostitution and lewdness.

There was also evidence that defendant actively aided and abetted in the operation of the facility and was not merely present. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999). Defendant screened customers from the security of a ticket booth and collected a cover charge before admitting them into the club. The following facts indicate that defendant knew the lewd nature of the club and aided and abetted its operation: he identified the club as a business, he had to pass through the club to enter the ticket booth, he tried to screen out customers who were members of law enforcement, he kept a loaded weapon by his side, and he sounded the alarm when police raided the facility. Under these circumstances, the prosecutor presented sufficient evidence to sustain defendant's aiding and abetting conviction.

"The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). "[A] defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470-471.

When the police officers raided the building, defendant was in the process of stepping out of the ticket booth. Inside the ticket booth was an assault rifle and a handgun. Defendant admitted to an officer that the rifle belonged to him. Therefore, while no one saw defendant in actual physical possession of the rifle, the evidence was more than sufficient to show that he was in constructive possession of the weapon.

Defendant next contends that the trial court erred in denying his motion for a new trial. We review for abuse of discretion a trial court's ruling on a motion for a new trial that is based on the argument that the verdict was against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). "An abuse of discretion will be found only where the trial court's denial of the motion was manifestly against the clear weight of the evidence." *People v Ross*, 145 Mich App 483, 494; 378 NW2d 517 (1985).

The evidence adduced by the prosecutor was sufficient to sustain the verdict for each charge, and defendant did not present any evidence to contradict the prosecutor's proofs. Defendant also failed to demonstrate that any improper motive, such as passion or prejudice, supplanted the jury's reason and led to the guilty verdict. *People v Plummer*, 229 Mich App 293, 306; 581 NW2d 753 (1998). Therefore, defendant has failed to establish any basis for finding that the verdict was against the great weight of the evidence.

Defendant also claims that the trial court erred when it admitted a Romanian-made rifle into evidence. A trial court's ruling regarding the admission of evidence is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). "An error in the admission or the exclusion of evidence is not a ground for reversal unless refusal to take this action appears inconsistent with substantial justice." *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003). For physical evidence to be admissible, the prosecution need only "lay a foundation identifying the articles as what they are purported to be and showing that they are connected with the crime or the accused." *People v Kemp*, 99 Mich App 485, 489; 298 NW2d 1 (1980). The prosecution does not need to establish an immaculate chain of custody if the prosecutor can satisfactorily demonstrate the validity and relevancy of the item through other means. *Id.* Here, an officer recovered a Romanian rifle from the ticket booth and a Chinese rifle from behind the bar, but in a written report, someone made a mistake in identifying which was which. Nevertheless, the officer who recovered the Romanian rifle unequivocally identified it as the one he confiscated from the booth and further testified that defendant admitted the rifle was his. Therefore, the trial court properly found that the prosecutor laid an adequate foundation for the rifle's admission.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell